

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 102 NOV. 8

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS
RAILWAY COMPANY, APPELLANT.

THE BOARD OF PUBLIC WORKS OF THE STATE OF
WEST VIRGINIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WEST VIRGINIA.

FILED JANUARY 17, 1891.

(16,146.)

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(16,146.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 409.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS
RAILWAY COMPANY, APPELLANT,

vs.

THE BOARD OF PUBLIC WORKS OF THE STATE OF
WEST VIRGINIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF WEST VIRGINIA.

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Transcript of Record.

THE UNITED STATES OF AMERICA, } To wit:
District of West Virginia,

At a circuit court of the United States for the district of West Virginia begun and held at the court-house, in the city of Wheeling, on the first Tuesday of December, being the third day of the same month, in the year of our Lord one thousand eight hundred and ninety-five—present, the Honorable John J. Jackson, judge of the district of West Virginia—among other were the following proceedings, to wit:

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY, a Corporation,

v8.

THE BOARD OF PUBLIC WORKS OF THE STATE OF
West Virginia, a Corporation; William A. Mac-
Corkle, I. V. Johnson, John M. Rowan, Virgil A.
Lewis, and T. S. Riley, Composing the said Board
of Public Works, and W. P. Cowan, Sheriff of Brooke
County, in said State.

In Equity.

2 *Bill of Complaint.*

In the Circuit Court of the United States for the District of West
Virginia. In Chancery.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY)
COMPANY, a Corporation,

v8.

THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIR-
ginia, a Corporation; William A. MacCorkle, I. V. Johnson,
John M. Rowan, Virgil A. Lewis, and T. S. Riley, Composing
the said Board of Public Works, and W. P. Cowan, Sheriff of
Brooke County, in said State.

To the judges of the circuit court of the United States for the dis-
trict of West Virginia:

The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, a corporation created and duly organized under the laws of the State of Ohio, brings this its bill against "The Board of Public Works," a corporation created and duly organized under the laws of the State of West Virginia; William A. MacCorkle, of Char-
leston, West Virginia, and a citizen of the State of West Virginia;
I. V. Johnson, of Charleston, West Virginia, and a citizen of the
State of West Virginia; John M. Rowan, of Charleston,
3 West Virginia, and a citizen of the State of West Virginia;
Virgil A. Lewis, of Charleston, West Virginia, and a citizen
of the State of West Virginia; T. S. Riley of Wheeling, West Vir-

ginia, and a citizen of the State of West Virginia, and W. P. Cowan, of Bethany, West Virginia, and a citizen of the State of West Virginia.

And thereupon your orator complains and says that it is the owner of and is operating a line of railway running through the States of West Virginia, Pennsylvania, Ohio, Indiana, and Illinois, with numerous branches and divisions, which said line of railway it operates by virtue of the authority of the laws of said States; that its main line runs for a distance of 7.11 miles through the said State of West Virginia, 6.53 miles of said distance being in the county of Brooke, in said State of West Virginia, and $\frac{5}{6}$ miles thereof in the county of Hancock, in said State of West Virginia; that said railroad extends westwardly from the said State of West Virginia into the State of Ohio, and in so doing crosses the Ohio river near the city of Steubenville, in said State of Ohio, by means of a bridge across said river, which said bridge was erected many years ago and is owned, operated, and controlled by your orator and constitutes a part of your orator's said line of railway, and that said Ohio river is a navigable stream and constitutes the boundary line between the said States of West Virginia and Ohio at the point where said bridge is erected.

Your orator further shows that, under and by virtue of the provisions of section 67 of chapter 29 of the Code of the said State of West Virginia, your orator is required, through its president, vice-president, secretary, or principal accounting officers, to make return in writing, under oath, to the auditor of the said State of West Virginia, on or before the first day of April of each year and in the manner prescribed by said section, of the property of your orator which is subject to taxation in the said State of West Virginia, and

4 said auditor is required by said section to lay said return, as soon as practicable after it is made, before a tribunal of said

State of West Virginia known as "The Board of Public Works;" and said Board of Public Works is authorized by said section to either approve said return or proceed, in the manner prescribed by said section, to assess and fix the fair cash value of all the property of railroad companies which they are required by said section to return for taxation; and said section also provides, among other things, that as soon as possible after the value of any railroad property is fixed for purposes of taxation by one of the several methods designated by said section, that the auditor shall assess and charge such property with the taxes properly chargeable thereon.

The said "The Board of Public Works" of the said State of West Virginia is, by virtue of section 1 of chapter 56 of the Code of said State of West Virginia, a corporation and is composed of the governor, auditor, treasurer, State superintendent of free schools, and attorney general of said State. The defendant William A. MacCorkle is the governor of said State of West Virginia, the defendant I. V. Johnson is the auditor of said State of West Virginia, the defendant John M. Rowan is the treasurer of said State of West Virginia, the defendant Virgil A. Lewis is State superintendent of free schools of said State of West Virginia, the defendant T. S. Riley is

attorney general of said State of West Virginia, and the said five last-named defendants together constitute the said "The Board of Public Works" of the said State of West Virginia, and the defendant W. P. Cowan is sheriff of the county of Brooke, in said State of West Virginia.

Your orator further shows that before the first day of April, in the year 1894, it made return of its property subject to taxation in the said State of West Virginia for the year 1894 to the auditor of said State in all respects as required by the said section 67 of chapter 29 of the Code of said State of West Virginia, as will more fully

5 appear from a copy of said return, which is herewith filed as part of this bill, marked "Exhibit A." The total length of

the said bridge over the said Ohio river, hereinbefore referred to, including the abutments of said bridge, is 2,044 feet, 1,518 feet of which are in the said State of West Virginia and 526 feet of which are in the said State of Ohio, and in making return of its property for taxation for the year 1894 to the auditor of the said State of West Virginia your orator included in the 7.11 miles of main-track railway returned by it, as shown by the said Exhibit A, so much of said bridge as lies within the State of West Virginia, amounting to 1,518 feet. Some time in the month of September, 1894, the said Board of Public Works of the said State of West Virginia met at the city of Charleston, in said State of West Virginia, as provided for by said section 67 of chapter 29 of the Code of said State of West Virginia, to assess and fix the valuation of railroad property in the said State of West Virginia for purposes of taxation, and then and there, refusing to approve your orator's said return, proceeded, among other things, to assess your orator with 6.53 miles of main track and 6.53 miles of second track in the said county of Brooke and State of West Virginia; which said assessment and valuation covers the entire length of said railroad in the State of West Virginia, including so much of the said bridge as lies in said State; and, in addition thereto, valued and assessed the said bridge as a separate structure at the sum of \$200,000.00, placing the tax, upon said bridge at \$3,060.00; and the auditor of said State of West Virginia proceeded to assess your orator with the said sum of \$3,060.00 taxes upon said bridge, thereby assessing your orator for purposes of taxation for the year 1894 with the entire length of said bridge in the State of West Virginia, to wit, 1,518 feet, as a part of your orator's said railway in said State, and also assessing said bridge for purposes of taxation as a separate structure at \$200,000.00, and thereby assessing and taxing the said 1,500 feet of your orator's

6 said railway a second time for the said year 1894, and insisting on the payment of the taxes thereon, and thereby collecting a double tax on the said 1,518 feet of said bridge, which your orator claims and insists should only be assessed and taxed as so many feet of said railroad.

Neither the said "The Board of Public Works," nor any member thereof, nor the said auditor informed your orator of the valuation which had been placed upon your orator's property by said board for taxation, nor of the taxes which had been assessed thereon by

the said auditor, and on the 28th day of September, 1894, your orator, not having been informed of the said action of said board or of the said auditor, addressed a letter through M. J. Becker, its chief engineer, to the said auditor, inquiring of the said auditor what action had been taken by the said Board of Public Works and the said auditor with regard to the assessment of taxes on your orator's property for the year 1894, and neither the said auditor nor any member of the said "Board of Public Works," or any other person, ever answered said letter or gave your orator any information with regard to the valuation or taxation of its property, nor did your orator receive any such information from any source until the 19th day of January, 1895, when your orator received from the said auditor a statement showing, among other things, that the said "Board of Public Works" had placed a separate or special and additional valuation of \$200,000.00 upon said bridge for the purpose of taxation, and the said auditor had proceeded to assess and charge your orator, among other things, with the sum of \$3,060.00 as taxes for the year 1894 on the said sum of \$200,000.00, the valuation placed upon the said bridge by the said "Board of Public Works."

The total valuation placed upon your orator's property in the said State of West Virginia by the said "Board of Public Works," not including the said separate or special valuation placed upon said bridge for the year 1894, but including what is known as the

7 New Cumberland branch of your orator's said line of rail-way, which is situated in the county of Hancock, in the said State of West Virginia, amounting to \$310,830.00, the total tax on which amounted for the said year to \$4,187.00. On the 19th day of January, 1895, a demand was made upon your orator by the said auditor for the payment of its taxes for the year 1894, including the said sum of \$3,060.00, taxes upon your orator's said bridge; and your orator, being advised and believing that the said "Board of Public Works" had no right to impose a tax upon said bridge as a separate structure in addition to its assessment as part of the railroad, and that said auditor had no right to assess or charge your orator with the said sum of \$3,060.00 or any other sum as an additional tax upon said bridge as a separate structure, refused to pay the said sum of \$3,060.00, and tendered to the said auditor the full amount of the taxes due on its said railroad in the said State of West Virginia, not including the additional tax on said bridge, to wit, the sum of \$4,187.00, which said sum the said auditor accepted, but insisted and still insists upon his right to collect the said sum of \$3,060.00 as taxes upon said bridge as aforesaid.

Your orator further shows that on the — day of —, 1895, the said auditor of the said State of West Virginia added 10 % to the said sum of \$3,060.00 to pay the expense of collecting the same, and certified said sum, with the said 10 % added thereto, to the defendant W. P. Cowan, sheriff of the said county of Brooke as aforesaid, for collection; that said sheriff has since said date made a demand upon your orator for the said sum of \$3,060.00 and the said 10 % additional thereto, and is now threatening by legal process to collect the said sums and will do so, and will thus inflict great

and irreparable injury upon your orator unless prevented from so doing by the interposition of some court having jurisdiction thereof.

Your orator further shows that its said bridge constitutes a part of its said line of railway and has no separate earning capacity and no greater earning capacity than any other equal number of feet of your orator's said line of railway, and is used exclusively by your orator in transporting freight and passengers across the said river to and from the said States of West Virginia and Ohio; and your orator is advised and believes, and so charges, that the said bridge is an instrument of interstate commerce, and is not, as a separate structure from your orator's said line of railway, a proper subject for taxation by the said State of West Virginia in the manner herein set forth.

Your orator therefore charges that the said tax upon its said bridge is illegal and unjust and constitutes a cloud upon the title of your orator to the said bridge, and that by reason of clause 3 of section 8 of article 1 of the Constitution of the United States the circuit court of the United States for the district of West Virginia and the judges thereof are clothed with authority and jurisdiction to restrain and prevent the assessment and collection of the said illegal and unjust tax.

In tender consideration whereof and inasmuch as your orator is without remedy in the premises, save by the aid of this honorable court and the judges thereof, before whom the matters herein complained of are properly cognizable, your orator prays that the said "Board of Public Works" of the State of West Virginia, William A. MacCorkle, I. V. Johnson, John M. Rowan, Virgil A. Lewis, T. S. Riley, and W. P. Cowan be made parties defendant to this bill and be required to answer the same according to law; that all necessary and proper process may issue against the said defendants; that your orator may have an injunction restraining the said defendants, The "Board of Public Works" of the State of West Virginia, William A. MacCorkle, I. V. Johnson, John M. Rowan, Virgil A. Lewis, and T. S. Riley, and each of them, from assessing or attempting to assess any taxes in the future upon your orator's said bridge as a separate structure, and also restraining the defendant W. P. Cowan from collecting or attempting to collect the said illegal and unjust tax from your orator.

And your orator prays for such other, further, and general relief as to equity may seem good or the nature of its case may require.

And for this it will ever pray, &c.

(Signed)

THE PITTSBURGH, CINCINNATI,
CHICAGO & ST. LOUIS RAIL-
WAY COMPANY,
By J. DUNBAR AND
J. B. SOMMERVILLE, *Its Solicitors.*

STATE OF PENNSYLVANIA, { *To wit :*
County of Allegheny,

This day personally appeared before me, I. M. McKibben, a notary public within and for the State and county aforesaid, M. J. Becker, who, after being duly sworn by me, upon oath says that he is the chief engineer of The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, the plaintiff in the above-entitled cause, and is familiar with the general business of said company, and that the facts and statements contained in the foregoing bill are true.

(Signed)

M. J. BECKER.

Taken, sworn to, and subscribed before me this 18th day of March, 1895.

I. M. MCKIBBEN,
Notary Public as Aforesaid. [SEAL.]

Endorsed : " Filed in office this 25th day of March, 1895. L. B. Dellicker, clerk."

10

EXHIBIT A.

Copy to J. Dunbar, 2, 21, '95.

Valuation of P., C., C. & St. L. R'y Main Line in the State of West Virginia as Returned for Taxation for the Year 1894.

Brooke county.

Cross Creek district:

Main track	6.53 miles at \$13,000 00 =	\$84,890 00
Second track	6.53 " " 4,000 00 =	26,120 00
Side track	12.62 " " 2,500 00 =	31,550 00
Rolling stock	6.53 " " 3,567 78 =	23,298 00
Telegraph line	6.53 " " 100 00 =	653 00
Supplies and tools		1,306 00
Station-house at Colliers		1,300 00
Water tank	" "	400 00
Sand-house	" "	50 00
Car-house	" "	100 00
Trainmen's house	"	950 00
Scale-house at	"	100 00
Tower west of	"	450 00
Tower at New Cumberland Junction		800 00
Station at Hollidays Cove		180 00
Station at Wheeling Junction		400 00
Total listed value for Brooke county		\$172,547 00

11		\$172,547 00
Hancock county.		
Butler district:		
Main track....	0.58 miles at \$13,000 00 =	\$7,540 00
Second track..	0.58 " " 4,000 00 =	2,320 00
Side track....	0.95 " " 2,500 00 =	2,375 00
Rolling stock..	0.58 " " 3,567 00 =	2,069 00
Telegraph line.	0.58 " " 100 00 =	58 00
Supplies and tools....		116 00
Total listed value for Hancock county.....		14,478 00
Total listed value of main line.....		\$187,025 00

Summary of Mileage.

Main track.....	7.11 miles.
Second track.....	7.11 "
Side tracks.....	13.57 "
Rolling stock.....	7.11 "
Telegraph line.....	7.11 "

Endorsed: "Filed in office this 25th day of March, 1895. L. B. Dellicker, clerk."

12 *Affidavit of J. B. Sommerville.*

In the Circuit Court of the United States for the District of West Virginia. In Chancery.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY }
vs.
THE BOARD OF PUBLIC WORKS *et al.* }

STATE OF WEST VIRGINIA, } To wit:
County of Wood, }

This day personally appeared before me, L. B. Dellicker, clerk of the above-named court, J. B. Sommerville, who, after being duly sworn by me, upon oath says he is one of the attorneys for the complainant in the above-named cause, and that since the bill in said cause was sworn to the defendant W. P. Cowan, sheriff of the county of Brooke, has levied upon a freight engine of the above-named complainant for the purpose of enforcing the collection of the taxes upon complainant's bridge mentioned and described in the bill in said cause, and that said W. P. Cowan now has the said engine in his custody.

(Signed)

J. B. SOMMERVILLE.

Taken, sworn to, and subscribed before me this 25th day of March, 1895.

L. B. DELLICKER, Clerk.

Endorsed : " Filed in office this 25th day of March, 1895. L. B. Dellicker, clerk."

13

Order of Injunction.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY
vs.
THE BOARD OF PUBLIC WORKS *et al.*

} In Equity.

On this 25th day of March, 1895, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company presented their bill, accompanied with affidavit and exhibits, to the undersigned, a judge of this court, against the Board of Public Works *et al.*, praying, amongst other things, for an injunction to restrain the Board of Public Works, and also W. P. Cowan, sheriff of Brooke county, from enforcing and collecting a claim for taxes due the State of West Virginia as well as the county of Brooke.

Upon consideration whereof the court is of opinion and doth order that the bill be filed, with leave to sue out a process against the various defendants named in the bill.

It is further ordered and adjudged that an injunction be awarded against each and all of the defendants restraining and inhibiting each and all of them from enforcing the claim for taxes set out and described in complainant's bill until the further order of this court.

But before this injunction takes effect complainant or some responsible person for it shall enter into bond, with good security, to be approved by the clerk of this court, at Wheeling, in 14 the penalty of three thousand dollars, conditioned to abide and perform any decree that the court may hereafter enter in this cause; and the motion for a permanent injunction is set down for hearing on the 4th day of April, 1895, at Wheeling, at the United States court-room at that place.

And it is further ordered that the complainant serve a copy of this order upon each and every one of the defendants, which is to be held as sufficient notice to the defendants of the within injunction.

It is further ordered, upon the filing of the bond required by this order, any property seized or levied upon by the sheriff of Brooke county be released and restored to the defendant company.

Enter.

(Signed)

JACKSON, Judge.

March 25th, 1895.

Endorsed : " Ent., March 25th, 1895, C. O. Book, page 108."

Subpoena in Chancery.

UNITED STATES OF AMERICA, }
 District of West Virginia, } ss:

The President of the United States of America to the marshall of the district of West Virginia, Greeting :

You are hereby commanded to summon the Board of Public Works of the State of West Virginia, a corporation; William A. MacCorkle, I. V. Johnson, John M. Rowan, Virgil A. Lewis, and T. S. Riley, composing said Board of Publ. Works, and W. P. Cowan, sheriff of Brooke county, in said State—

Citizens of and residents in the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Wheeling, on the first Monday in May next, to answer a certain bill in chancery now filed and exhibited in said court against them by the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, a corporation created and duly organized under the laws of the State of Ohio and citizens of and residents in the State of Ohio.

Hereof you are not to fail, under the penalty of the law thence ensuing.

16 And have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, this 25th day of March, A. D. 1895, and in the 119 year of the Independence of the United States of America.

Attest :

L. B. DELLICKER, Clerk.

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of May, 1895 ; otherwise the said bill may be taken *pro confesso*.

L. B. DELLICKER, Clerk.

Attest : L. B. DELLICKER, Clerk.

Endorsed : Served the within subpoena on the sheriff of Brooke —, West Virginia, March 28, 1895, by delivering a duly attested copy thereof to J. N. Baird, deputy sheriff of said county, at 17 Wellsburg. Served on John M. Rowan, I. V. English, and Virgil A. Lewis March 28, 1895, by delivering a duly attested copy thereof to each of them, at Charleston, W. Va. Served on T. S. Riley by delivering to him a duly attested copy thereof March 26, 1895, at Wheeling, W. Va. Served on W. A. MacCorkle by delivering to him a duly attested copy thereof, at Charleston, March 30, 1895. Served on the Board of Public Works of West Virginia, a corporation, by delivering a duly attested copy thereof to William

A. MacCorkle, governor of the State of West Virginia, *ex officio* president of said board of public works. A. D. Garden, U. S. marshal, by B. L. Priddie, deputy.

18

Injunction.

At a Circuit Court of the United States for the District of West Virginia, Held at Wheeling, March 25, 1895, at Chambers.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY

vs.

THE BOARD OF PUBLIC WORKS *et al.*

In Equity.

On this 25th day of March, 1895, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company presented their bill, accompanied with affidavit and exhibits, to the undersigned, a judge of this court, against the Board of Public Works *et al.*, praying, amongst other things, for an injunction to restrain the Board of Public Works, and also W. P. Cowan, sheriff of Brooke county, from enforcing and collecting a claim for taxes due the State of West Virginia as well as the county of Brooke.

Upon consideration whereof the court is of opinion and doth order that the bill be filed, with leave to sue out process against the various defendants named in the bill.

19 It is further ordered and adjudged that an injunction be awarded against each and all of the defendants restraining and inhibiting each and all of them from enforcing the claim for taxes set out and described in complainant's bill until the further order of this court.

But before this injunction takes effect complainant or some responsible person for it shall enter into bond, with good security, to be approved by the clerk of this court, at Wheeling, in the penalty of three thousand dollars, conditioned to abide and perform any decree that the court may hereafter enter in this cause.

And the motion for a permanent injunction is set down for hearing on the 4th day of April, 1895, at Wheeling, at the United States court-room at that place.

And it is further ordered that the complainant serve a copy of this order upon each and every one of the defendants, which is to be held as a sufficient notice to the defendants of the within injunction.

It is further ordered, upon the filing of the bond required by this order, any property seized or levied upon by the sheriff of Brooke county be released and restored to the defendant company.

Enter.

JACKSON, *Judge.*

March 25, 1895.

Attest:

[SEAL.]

L. B. DELLICKER, *Clerk.*

A copy.

Attest:

L. B. DELLICKER, *Clerk.*

Served within injunction on the sheriff of Brooke county, West Virginia, March 26, 1895, by delivering a duly attested copy thereof to J. N. Baird, deputy sheriff of said county, at Wellsburg, W. Va. Served by delivering a duly attested copy thereof to each of the following-named persons upon the dates and at the places mentioned: To T. S. Riley, a member of the Board of Public Works of West Virginia, March 26, 1895, at Wheeling, W. Va.; to I. V. Johnson, John M. Rowan, and Virgil A. Lewis, members of the Board of Public Works of West Virginia, March 28, 1895, at Charleston, W. Va.; to William A. MacCorkle, a member of the Board of Public Works of West Virginia, a corporation, by delivering a duly attested copy thereof to William A. MacCorkle, governor of the State of West Virginia and *ex officio* president of said Board of Public Works of West Virginia, March 30, 1895, at Charleston. A. D. Garden, U. S. marshall, by B. L. Priddie, deputy.

21 *Demurrer of Board of Public Works.*

The Circuit Court of the United States for the District of West Virginia.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, a Corporation, <small>vs.</small> THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST Virginia, a Corporation; William A. MacCorkle, I. V. Johnson, John M. Rowan, Virgil A. Lewis, and T. S. Riley, Composing the said Board of Public Works, and W. P. Cowan, Sheriff of Brooke County, in said State, Defendants.	} In Equity.
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The demurrer of the above-named "The Board of Public Works" of the State of West Virginia, a corporation, duly created and duly organized by and under the laws of said State, to the bill of complaint of the above-named plaintiff.

The defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill set up or contained to be true in such manner and form as the same are 22 therein set forth and alleged, demurs to said bill, and for causes of demurrer shows:

1. That it appears by the plaintiff's own showing that it is not entitled to the relief prayed by the bill against the defendant.
2. The plaintiff has not by his bill made such a case as entitles it to any relief against this defendant.
3. Proper parties are lacking.
4. The averments of said bill are vague and uncertain, so much so as to render it doubtful what are the grounds upon which the plaintiff relies for relief.

Wherefore, and for diverse other good causes of demurrer appearing on the said bill, this defendant demurs thereto, and prays the

opinion and judgment of this honorable court whether it shall be compelled to make any answer to said bill. It further humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

(Signed)

T. S. RILEY.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

T. S. RILEY,
*Attorney for the Board of Public Works
and the Members Thereof.*

STATE OF WEST VIRGINIA, }
County of Ohio, District of West Virginia, } ss:

Thomas S. Riley, being duly sworn, says: "I am one of the above-named defendants, made such as attorney general of the State of West Virginia, and *ex officio* a member of the above-named Board of Public Works. The foregoing demurrer is not interposed for delay."

(Signed)

T. S. RILEY.

23 Sworn to before me this 8th day of June, 1895.

(Signed)

JAMES W. EWING,
Notary Public.

Endorsed: "Filed in clerk's office June 13, 1895. L. B. Dellicker, clerk U. S. circuit court. Wilson."

24 *Demurrer of W. P. Cowan, Sheriff.*

The Circuit Court of the United States for the District of West Virginia.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY, a Corporation, Plaintiff,

vs.

"THE BOARD OF PUBLIC WORKS" OF THE STATE OF
West Virginia, a Corporation; William A. Mac-
Corkle, I. V. Johnson, John M. Rowan, Virgle A.
Lewis, and T. S. Riley, Composing the said Board
of Public Works, and W. P. Cowan, Sheriff of
Brooke County, Defendants.

In Equity.

The demurrer of the above-named W. P. Cowan, sheriff of Brooke county, in the State of West Virginia, to the bill of the above-named plaintiff, filed in said court.

25 The defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same

are therein set forth and alleged, doth demur to the said bill, and for cause of demurrer he shows that the plaintiff has not by its bill made such a case as entitles it to the relief sought or to any relief against him, as sheriff as aforesaid or otherwise, as to the matters in said bill contained or any of them. Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any answer to said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) THAYER MELVIN,
Solicitor and Counsel for Defendant W. P. Cowan, Sheriff.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

June 8th, 1895.

(Signed) THAYER MELVIN,
Counsel for Defendant W. P. Cowan, Sheriff, &c.

STATE OF WEST VIRGINIA,
County of Brooke, District of West Virginia, }^{ss:}

W. P. Cowan, being duly sworn, deposes and says: "I am one of the above-named defendants in my official character as sheriff of Brooke county, State of West Virginia. The foregoing demurrer is not interposed for delay."

Sworn to before me this 8 day of June, 1895.

G. W. McCORD,
Notary Public in and for Brooke County, W. Va.

Endorsed: "Filed in office this 13th day of June, 1895. L. B. Delicker, cl'k U. S. circuit court. W."

26 Order Relating to Demurrer and Motion to Dissolve.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY }
vs. } In Chancery.
THE BOARD OF PUBLIC WORKS OF THE STATE OF }
West Virginia and W. P. Cowan, Sheriff of Brooke }
County.

The defendants above named, this 13th day of June, 1895, severally filed their demurrers, in writing, to the plaintiff's bill of complaint, in which demurrers the plaintiff joined; and the defendants respectively moved the court to dissolve the injunction heretofore in this cause awarded; and such motion and said demurrers are now set down for argument on the 18th day of June, 1895, at chambers, in Parkersburg, unless some other day shall in the meanwhile be named by the judge of this court.

Endorsed: "Entered on page 123 of the chancery order. L. B. Dellicker, clerk." "Enter. Jackson, judge. June 13th, 1895." "To the clerk of the court at Wheeling."

27

Order Dissolving Injunction.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY, a Corporation,

vs.

"THE BOARD OF PUBLIC WORKS" OF THE STATE OF
West Virginia, a Corporation; William A. Mac-
Corkle, I. V. Johnson, John M. Rowan, Virgil A.
Lewis, and T. S. Riley, Composing the said Board
of Public Works, and W. P. Cowan, Sheriff of Brooke
County, in said State.

In Equity.

The court being advised that this cause is a case of such magnitude and importance to both parties, and that in any event the judgment of this court will be appealed from, it is of opinion to enter an order dissolving this injunction without expressing any opinion as to the questions of law arising upon the demurrer.

It is therefore adjudged, ordered, and decreed that the demurrer to this bill be sustained, and that the injunction heretofore awarded be dissolved and the bill dismissed, which is accordingly done.

Endorsed: "Enter. Jackson, judge. Nov. 30, '95."

28

Petition for Appeal.

In the Circuit Court of the United States for the District of West Virginia. In Equity.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY
COMPANY

vs.

THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIRGINIA
et al.

The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in the above-named case, conceiving itself aggrieved by an order or decree entered therein on the — day of December, 1895, doth hereby appeal from said order or decree to the Supreme Court of the United States, and doth hereby pray that an appeal and supersedeas may be allowed it in said cause, and that a transcript of the record and proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

THE PITTSBURGH, CINCINNATI, CHICAGO &
ST. LOUIS RAILWAY COMPANY,

By J. DUNBAR AND J. B. SOMMERVILLE,

Its Attorneys.

Wheeling, W. Va., December 28th, 1895.

29

Assignment of Errors.

In the Circuit Court of the United States for the District of West Virginia.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY
vs.
 THE BOARD OF PUBLIC WORKS OF THE STATE OF WEST VIRGINIA
et al.

Assignment of errors.

And now, to wit, on this — day of —, 1895, comes The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in the above-named cause, by J. B. Sommerville, its attorney, and says that in the record and proceedings in said cause there is manifest error, to the prejudice of said plaintiff, in this, to wit:

I.

The assessment and taxation of the plaintiff's bridge, mentioned and described in the bill in said cause, by the defendants as a separate structure from plaintiff's railroad instead of as a part of said railroad is illegal and improper.

II.

The defendants have assessed and taxed said bridge not only as a separate structure, but also as a part of plaintiff's railroad, thereby imposing double taxation upon the plaintiff.

30

III.

The defendants failed to notify the plaintiff, even after being requested so to do, either of the amount of taxes assessed against the plaintiff or of the manner in which said taxes were assessed, thereby grossly violating their duty to the plaintiff and preventing the plaintiff from taking an appeal in said cause to the circuit court of Ohio county, West Virginia.

IV.

The assessment and collection of the said taxes under the circumstances of this case would deprive the plaintiff of its property without due process of law.

V.

The assessment and taxation of plaintiff's bridge both as a separate structure and as a part of plaintiff's line of railroad is an unwarranted and illegal interference with interstate commerce.

VI.

The tax complained of by the plaintiff in this cause constitutes a cloud upon the title to plaintiff's real estate, and especially upon the title to said bridge.

VII.

The circuit court of the United States for the district of West Virginia erred in dismissing the bill in this cause.

31

VIII.

The said court erred in dissolving the injunction in said cause.

IX.

Said court erred in not making said injunction perpetual.

Wherefore the said plaintiff prays that the order or decree of said circuit court of the United States for the district of West Virginia, entered on the — day of December, 1895, may be reversed, and that said court may be ordered and directed to enter an order or decree in said cause making the said injunction perpetual.

THE PITTSBURGH, CINCINNATI, CHICAGO &
ST. LOUIS RAILWAY COMPANY,

By J. DUNBAR AND J. B. SOMMERVILLE,

Its Attorneys.

Wheeling, W. Va., December 28th, 1895.

32

Bond and Approval.

In the Circuit Court of the United States for the District of West Virginia.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY

vs.

THE BOARD OF PUBLIC WORKS OF THE STATE OF
WEST VIRGINIA *et al.*

} In Equity.

Know all men by these presents that we, The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, a corporation, principal, and Joseph Speidel, of the city of Wheeling, county of Ohio and State of West Virginia, its surety, are held and firmly bound unto the above-named The Board of Public Works of the State of West Virginia in the sum of ten thousand dollars (\$10,000); for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, and our several heirs, executors, administrators, successors, and assigns, firmly by these presents.

In testimony whereof the said Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company has caused these presents to be signed by its vice-president and attested by its secretary, and has caused

its corporate seal to be thereto affixed this 16th day of December, 1895, and the said Joseph Speidel has hereunto set his hand and seal this 16th day of December, 1895.

The conditions of the above obligation are such that whereas the above-named The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company has taken an appeal in said cause to the Supreme Court of the United States to reverse an order or decree rendered in said cause on the — day of December, 1895, by the circuit court of the United States for the district of West Virginia:

Now, therefore, if the above-named The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in said cause, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, and shall, moreover, pay to the party or parties entitled thereto the unpaid taxes mentioned in the bill in said cause if the order or decree of the circuit court of the United States for the district of West Virginia entered in said cause on the — day of December, 1895, shall be affirmed by the Supreme Court of the United States, then this obligation to be null and void; otherwise to remain in full force and effect.

THE PITTSBURGH, CINCINNATI,
CHICAGO & ST. LOUIS RAIL-
WAY COMPANY,
By J. T. BROOKS, *Its Vice-President.*
JOS. SPEIDEL. [SEAL.]

Attest:

[SEAL.] S. B. LIGGETT, *Secretary.*

Acknowledged this 30th day of December, 1895.

L. B. DELLICKER, *Clerk.*

Approved this 27th day of December, 1895.

J. J. JACKSON, *Judge.*

34

Order Allowing Appeal.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY }
vs. } In Equity.
THE BOARD OF PUBLIC WORKS OF THE STATE OF
WEST VIRGINIA *et al.*

And now, to wit, on this 28th day of December, 1895, upon the petition of the plaintiff this day filed in said cause, accompanied by an assignment of errors therein, it is ordered that an appeal and supersedeas be allowed in this cause, as prayed for in the said petition; but this order shall not take effect until the plaintiff shall execute, before this court or a judge thereof, a bond, with good security, payable to the defendant The Board of Public Works of the State of West Virginia, in the penal sum of ten thousand dollars (\$10,000), conditioned that the said plaintiff shall answer all

damages and costs if it fail to make said appeal good, and shall, moreover, pay to the party or parties entitled thereto the unpaid taxes mentioned in the bill in this cause, if the order or decree of the circuit court of the United States for the district of West Virginia, entered in said cause on the — day of December, 1895, shall be affirmed by the Supreme Court of the United States.

Endorsed: "Enter. Jackson, judge. Dec. 27th, '95." "Ent. C. O., page 133."

35 UNITED STATES OF AMERICA ss:

In the Circuit Court of the United States for the District of West Virginia.

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY }
v.s.
THE BOARD OF PUBLIC WORKS OF THE STATE OF } In Equity.
WEST VIRGINIA *et al.*

To the Board of Public Works of the State of West Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 20th day of January, 1896, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of West Virginia, wherein The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company is appellant and The Board of Public Works of the State of West Virginia and others are respondents, to show cause, if any there be, why the order or decree entered in said cause by the circuit court of the United States for the district of West Virginia on the — day of December, 1895, should not be reversed and annulled and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 27th day of December, 1895.

J. J. JACKSON, *Dist. Judge.*

35½ [Endorsed:] Service of the within process accepted this 4th day of January, A. D. 1896. Board of Public Works, by T. S. Riley, its attorney.

36 Order Relating to the Transmission of Transcript to the Supreme Court of the United States.

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Test:

L. B. DELLICKER, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA, }
State and District of West Virginia, } To wit:

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify that the foregoing is a full and true transcript from the record and judicial proceedings of the said court, and contains the record and proceedings in a certain action in equity lately depending in the said court between The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, plaintiff, and The Board of Public Works of the State of West Virginia *et al.*, defendants, with all things concerning the same, as fully and wholly as they exist among the record and proceedings of the court aforesaid, together with the original citation issued and served in said action.

Witness my signature as such clerk and the seal of said court, at Wheeling, this 6 day of January, A. D. 1896.

{ Seal of the Circuit Court United States, District
West Virginia, Wheeling, West Va. }

L. B. DELLICKER,
Clerk as Aforesaid.

Endorsed on cover: Case No. 16,146. West Virginia C. C. U. S. Term No., 409. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, appellant, vs. The Board of Public Works of the State of West Virginia. Filed January 17th, 1896.